




---

---


---

---

---

---

---

Transportation Practice Group  
  
  
 Office of Attorney General

## INDOT Real Estate Documents for County Recorders

By:  
Kristen Edmundson  
Deputy Attorney General

---

---

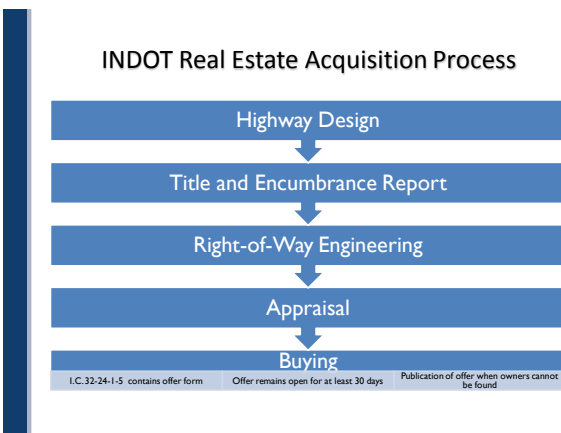
---

---

---

---

---



## INDOT Real Estate Acquisition Process (cont.)

Review of Signed Documents – by INDOT staff and DAG  
(or sent to condemnation if owner does not agree)



Payment (and obstacles to payment):

Problems with Ownership and Title	Business Entity Status	State and Federal Tax Liens	Real Estate Taxes	Mortgage Payoff	Bankruptcy
-----------------------------------	------------------------	-----------------------------	-------------------	-----------------	------------

## Recording Documents

Examples of documents that INDOT records:

- Deeds
- Easements
- Rights of Entry
- Restrictive Covenants for INDOT Environmental Mitigation
- Mortgage Releases
- Affidavits (rare)
- Condemnation Judgments



## Recording Requirements

Requirements for recorded documents in I.C. 32-21-2 et seq.

- Notarized (remember if notarized in another state must follow that state's notary law and Indiana must accept if it does)
- If a deed and buying less than an entire tax parcel, must have a survey showing that split.

Requirements for recorded documents in I.C. 36-2-11 et seq.

- Margins (I.C. 36-2-11-16.5) – these dictate fees – pay extra if margins not met (INDOT exempt for fees for real estate acquisition documents – but would pay to record a mortgage release, for example)
- Prepared by (I.C. 36-2-11-15)
- Redaction Language: "I affirm under the penalties for perjury that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Your Name Printed or Signed."

## INDOT Exempt from Recording Fees

### I.C. 8-23-7-31

- "(a) Whenever the department acquires real property, rights, or easements for the construction, repair, and maintenance of a state highway, a legal description of all rights-of-way and easements, including the area of the land acquired, shall be filed by the department in the office of the recorder in the county in which the real property is located. The description shall be recorded in the deed records of the county. No fee may be charged for filing and recording the description..."
- Mortgage release, separate affidavits would not fit this category and INDOT sends recording fees for these.

## INDOT Examples

### Deed Types

- Warranty Deed
- Limited Warranty Deed
- Quit Claim Deed
  - Quit Claim (Release)
    - Ex.: leases, other contract or possession rights (billboards, mobile home not owned by land owner, tenants of record, option holder)
  - Quit Claim (Mineral Rights)
  - Quit Claim (Mineral Surface Rights)

## Deeds continued

### Sales Disclosure Form

- I.C. 36-2-11-14 (deed may not be recorded until County Auditor endorses deed with "duly entered for taxation subject to final acceptance for transfer", "not taxable", or "duly entered for taxation")
- I.C. 36-2-9-18 (the auditor may require that a tax identification number identifying the affected real property be placed on an instrument that conveys, creates, encumbers, assigns, or otherwise disposes of an interest in or a lien on real property)
- I.C. 6-1-1-5.5 et seq. (establishes Sales Disclosure Form requirements and process)

### Department of Local Government Finance

- <http://www.in.gov/dlgi/8294.htm>
- Form and instructions available there

## Deeds continued

### Sales Disclosure Form

- INDOT will submit these with all Warranty Deeds and Limited Warranty Deeds
- INDOT generally will not submit a SDF with a Quit Claim
- Why not?
  - Quit Claims from record owner not accepted – INDOT will go to condemnation rather than accept a quit claim (generally)
  - So, quit claims are only received from someone other than record owner – someone with only possessory rights or leasehold rights, or who cannot prove ownership
- Quit Claim deed will not have effect on tax record ownership
- Quit Claim used merely to "clear title" for the record of that particular interest
- Quit Claim signer is paid the \$ listed in first paragraph.
- Quit Claim (or other recordable document) is required for State Auditor to write the check. I.C. 8-23-7-11.
- Money paid is NOT for transfer of real estate – could be a cost-to-cure (moving billboard) or other damages for personal property or contract rights

## INDOT Examples

### Easement Types

- Temporary Easements
  - Could be for demolition of structure, driveway construction, working room, grading, etc.
  - Will generally say in one of the paragraphs what is the purpose
- Perpetual Highway Easement
  - Mainly used for drainage facilities or other rare cases where INDOT is not acquiring fee simple

## Easements continued

### Easement Types

- Right of Entry
  - Really a temporary easement – but for matter of days, not years
  - Tree-Cutting Right of Entry – specific end date – usually April 1 of that same year.
  - Right of Entry – obtained for regular acquisitions to cover time period between when owner signs and gets paid for full acquisition – could be a few months if waiting on mortgage payoff letter, etc. ROE expires once deed recorded.

## INDOT Environmental Documents

### Conservation and Mitigation Easement

- Owner retains property, but has severe restrictions on use.
- Generally SDF will be provided – but again all \$\$ will be damages – not actually acquiring fee simple

---

---

---

---

---

---

---

## INDOT Environmental Documents

### Declaration of Restrictions and Covenants

- Recorded on INDOT-owned land that was used for environmental conservation or mitigation.
- Required by environmental agencies – to protect land from development, etc. if INDOT ever were to sell in the future

---

---

---

---

---

---

---



## Other Documents

### Mortgage Releases

- INDOT will pay to record, if not recorded directly by mortgage company

### Affidavits

- Lessor's Affidavit of Noncompliance by Lessee (clears old oil and gas leases from chain of title)
- Other – fairly rare because survivorship language, etc. usually in the body of the Deed
- Adverse Possession Affidavit – only used by INDOT in rare circumstances and with advanced discussion with County
- INDOT would pay recording fees for these

---

---

---

---

---

---

---

## Condemnations

- Two-step transfer process for acquisitions through a court case:
  - Certification
  - Recording of Judgment

---

---

---

---

---

---

---

---

## Condemnation

### 1. Certification of Transfer

- Once INDOT deposits the amount of court appraisers' award (which may be different than the final award through settlement or jury), then INDOT files a "Certification of Transfer"
- The Certification recites when money was posted and has legal descriptions of all fee simple acquisitions (because those are the only ones changing ownership).
- Certification required by I.C. 32-24-1-10:
  - "(b) Upon payment by the plaintiff of the amount of the award of the court appointed appraisers, the plaintiff shall file or cause to be filed with the auditor of the county in which the property is located a certificate, certifying the amount paid to the circuit court clerk and including the description of the property being acquired. The auditor of the county shall then transfer the property being acquired to the plaintiff on the tax records of the county."
- Generally, the Certification is NOT recorded – only for the use of the auditor at this point for tax assessment and bill purposes.

---

---

---

---

---

---

---

---

## Condemnation

### 2. Judgment

- Not available until the end of the case – either Agreed Findings and Judgment (if settled) or Judgment (if went to trial or no one appeared)
- Sales Disclosure Form will be submitted (signed only by State, not owner since contested)
- Judgment SHOULD be recorded – it is the final document that transfers title.

---

---

---

---

---

---

---

---

## Real Estate Taxes

I.C. 8-23-7-31 states:

"Real property and interests in real property acquired for permanent highway purposes are exempt from taxation from the date of acquisition, provided that all taxes, interest, and penalties recorded on the property tax duplicates have been paid. Where real property or interests in real property are acquired after the assessment date of any year but before December 31, the taxes on the property in the ensuing year are not a lien on the property and shall be removed from the tax duplicates by the county auditor."

---

---

---

---

---

---

---

---

## Real Estate Taxes (cont.)

If the deed is dated before December 31 and all taxes have been paid in full from that same year, then next year's tax bill (for same year assessment value) is wiped out.

This statute is sometimes interpreted differently for parcels that are in condemnation – the Certification will indicate which years taxes stop.

---

---

---

---

---

---

---

---

## Questions & Answers




---

---

---

---

---

---

---

---